



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL -S

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by their agent. Neither party submitted any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's agent testimony is as follows. The tenancy began on September 1, 2016 and ended on August 31, 2017. The tenants were obligated to pay \$950.00 per month in rent in advance plus a portion of the utilities and at the outset of the tenancy the tenants paid a \$475.00 security deposit which the landlord still holds. The agent testified

that the tenants left the unit dirty and damaged at move out. The agent testified that the tenants damaged the walls requiring some painting and damaged a blind that required replacement. The agent testified that they abandoned the suite and failed to pay a hydro bill. The agent testified that written condition inspection reports were conducted at move in and again at move out with KM.

The landlord is applying for the following:

1.	Hydro	\$43.95
2.	Painting	210.00
3.	Cleaning	105.00
4.	Blinds	24.61
5.	Filing Fee	100.00
6.	Less Deposit	475.00
	Total	\$8.56

The tenants gave the following testimony. KM testified that she left the unit cleaner than when she received it. KM testified that she had no issue in paying for the hydro but disputed the remainder of the claim. FE testified that the damage to the walls was pre-existing and that the blinds were not damaged at move out. FE testified that numerous attempts to resolve the matter and avoid arbitration were made but the landlord was not responsive to those attempts.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Hydro - \$43.95

The tenants accept responsibility for this claim, accordingly; the landlord is entitled to \$43.95.

Painting \$210.00, Cleaning \$105.00 & Blind \$24.61

The landlord did not provide condition inspection reports, photos, videos or receipts to support his position. The tenants adamantly dispute these costs. Based on the insufficient evidence before me I find that the landlord has not satisfied all four factors required under section 67 of the Act and I therefore must dismiss the remainder of their claim.

Other than the tenants accepting responsibility for the hydro, the landlord has not been successful in their claim and I therefore find that they are not entitled to the recovery of the filing fee, accordingly; I dismiss that portion of their application.

Conclusion

The landlord has established a claim for \$43.95. I order that the landlord retain that amount from the deposit in full satisfaction of the claim and return the remaining \$431.05 of the security deposit to the tenants. I grant the tenants an order under section 67 for the balance due of \$431.05. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 19, 2018

Residential Tenancy Branch